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VIOLENCE AGAINST WOMEN IN AFRICA

Violence in general is an extreme violation of basic human rights, especially the rights to life, liberty and the security of person as defined in the Universal Declaration of Human Rights. The available research on violence against women[1] concludes that this problem is a reality in African societies and families and that it is spreading.

However, it is necessary to underline that the research of the issue in African countries is far from being comprehensive. Some of the studies manage only to touch upon the problem of violence against women and, as a rule, limit themselves to the analysis of certain aspects of the issue such as legal remedies for the victims and sanctions against the offenders for some of the most common forms of violent offences. Among such studies one can mentioned a series on The Law and the Status of Women in the Central African Republic, Ghana, in Morocco, Tanzania, and in Zaire carried out by the ECA/African Training and Research Centre for Women. Some other studies address only specific types or forms of violence against women as, for example, Egyptian and Nigerian studies on Women Assaulted in the Family or A Study of Rape in Swaziland in the series "Women and Law in Southern Africa". These studies are based on official information available in police stations, courts, clinics, and social welfare organisations which is far from being complete for the purpose of a comprehensive research of the problem.

Thus, it seems that within the problem of violence against women in Africa a number of facets remain seriously under-documented and under-researched. For instance, the problem of a legal definition of violence in general and of its certain types in particular; causes of types and forms of violence agai nst women

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[1]see bibliography in Annex 1

and interrelationships between these causes and the "minor" social status of women in society and within the family in Africa; consequences of violence against women and its impact on national development; treatment of various types and forms of violence against women and the effectiveness of different approaches and methods; treatment of the women who are the victims of violence and the effectiveness of the measures being used - all of these still need to be surveyed.

The problem of legal definition of violence

Except for the study on the incidence of domestic violence in Egypt[2] and the above-mentioned Declaration on Violence Against Women adopted by the Expert Group Meeting practically none of the available research on violence against women in Africa tries to provide a definition of violence as it is.

The Egyptian study proposes the defination that "any individual or group is subject to violence when it faces the threat of coercion or is disciplined to act in a manner required by another individual or group".

Some of the studies define violence through the reference to the already identified and existing forms of violence such as rape, defilement and abduction,[3] Thus, The Report of the Secretary-General on Efforts to Eradicate Violence Against Women Within the Family and Society made in 1988 to the 32nd Session of the Commission on the Status of Women defines violence as "physical, sexual, emotional and economic abuse within the family; rape and

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[2] Forms of Crisis Intervention and Types of Immediate and Structural Measures to Rendre Assistance to Women Assaulted in the Family: The Case of Egypt. BAW/EGM/86/CS.5

[3] See bibliography No. 15, 14, 15, 16, 17 in Annex 1

sexual assault; sexual harassment and trafficking in women; involuntary prostitution; and pornography" while stressing that all of these "have as their common denominator the use of coercion to make women do things against their will". Some other studies only provide the very definitions of specific forms of violence which are used by their domestic legislation [4], as, for example, The Study of Rape in Swaziland which provides definition of rape as "unlawful, intentional intercourse with a woman without her consent".

The last two approaches both seem inappropriate because,first of all,there is no universal understanding of legal terms in African States. In spite of the common legal basis for certain groups of African countries, one and the same term is used to identify offences which in various African jurisdictions are different in their *corpus delicti*. On the other hand, the offences with the same *corpus delicti* may appear under varying names in the domestic legislation of different countries. The existence of specific offences under unique names in some countries as well as the possibility of new forms of violence to appear in the future make the need for a common understanding and definition of violence even more acute.

On the other hand, the authors of some studies on Africa stress the limited capacity of the law as an instrument of social change[5] which is firstly due to its nature as a reflection of the dominant political and social values of a given society and secondly, because of the existing natural and artificial resistance to anything new which exists in every society. Also it is necessary to consider the need to interpret concrete legal provisions in

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[4]see bibliography No.2, 3, 4, 5, 6, 8, 10, 11 in Annex 1

[5]see bibliography No.1, 2, 3, 7, 15, 17 in Annex 1

order to apply them to a variety of real life cases. The interpretation of the law is done either by the legislators themselves or by the courts which happens in the majority of the cases. The courts tend to follow the rule of a legal precedent, a practice which is very common in juresprudence, especially when the law itself does not provide exact and clear definitions and remedies. Thus, voluntarily or not they might tend to restrict the introduction and protection of new progressive traditions and customs. As stressed in the Tanzanian study, **"a judge has to try to interpret the law and attempts to apply it to the facts of the case but he does not operate in a vacuum but in a society of which he is also a part. Therefore, where a statute is passed with the intention to bring about social changes,a judge would seem to be rather cautious about changing his outdated attitudes and thus tends to restrict the operation of the law ".**

In order to contribute to the solution of the existing gap in legislation it seems appropriate to propose the following definition of violence:

Violence may be defined as conduct which demands and enforces obedience while humiliating and degrading the victim through the use or the threat to use of force in the form of any object, power of body, power of mind, power of authority or power of law while it might be directed at the victim or at any other person, animal or object related to the victim.

Therefore, the term "sexual violence" may be defined as an offence in which coercion or its threat is used by the offender for achieving a specific purpose which humiliates and degrades the victim as a representative of her or his sex. At the same time, it seems possible to use the term "sexual harassment" only for identifying a specific type of offence which is different from sexual violence by lacking the element of coercion but has, as its

method and purpose, the element of humiliation to degrade the victim as a representative of her or his sex. It is clear that both these types may have a number of forms differentiated by the object (women, men), age of the object (elderly, adults, children), state of mind of the object (normal, imbecile) and other factors (marital status, parental status).

Forms of violence against women

As mentioned above, the available studies on African women[6] identify a number of forms of violence against them, some of which are well known in other jurisdictions and others which may be considered to be specific to the African region.

The overwhelming majority of the identified crimes represent various forms of sexual assault such as abduction, defilement, carnal knowledge, indecent assault, and rape. It is also possible to include seduction. Some jurisdictions identify such an offence as insulting the modesty of a woman?[7] Many African jurisdictions identify as well a number of derivatives of the above-mentioned offences such as attempted rape, or assault with intent to rape, or attempted defilement, or attempted indecent assault.

In the case of African countries where parallel legal systems still exist (one based on customary law, another based on religious law a third based on general law) it is possible to speak about legalised forms of violence against women. Among these, the studies identify such traditional practices as child betrothals and marriages, traditional marriages which do not require the consent of the parties in order to make the marriage legally valid, kidnapping of girls known as *the kulehya or the kwendzeselwa* in

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[6]see bibliography No.2, 3, 4, 5, 6, 7, 10, 11 in Annex 1

[7]For example, Tanzania.

various tribes, wife inheritance in the form of *the levirate* or *the sororate*, widowhood rites, as well as wife battering which are traditionally justified and permitted in many ethnic groups.

It is also possible to treat as specific legalised forms of violence against women such customs as female circumcision and other traditional health practices and taboos which exist with regard to women's sexuality, reproductive function, and nutrition and which are often supported by and based on various superstitions, beliefs and myths. Very often such practices force women to undertake surgical interference or action which leads to their exhaustion and malnutrition.

At last, a number of studies include prostitution and pornobusiness in the group of violent offences against women. With regard to this and having in mind the above-given definition of violence, it seems appropriate to differentiate between violent forms of prostitution and non-violent, i.e. when there is an element of coercion towards a woman to get involved in these activities, then prostitution as a specific form of violence is present. In the opposite case, it is no more than sexual harassment of women.

Causes of violence against women

The available research[8] identifies various causes of the problem from mental sickness of the offender to provocative behaviour of the victim.Even more reasons are provided when it comes to specific forms of violence against women, as for example in the case of "wife battering". However, various authors express different opinions regarding the range and importance of different causes.

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[8]see bibliography No.1 - 17 in Annex 1

At the same time, many researchers[9] consider all these various reasons, except maybe the mental sickness of the offender, as derivatives from the prevailing causes in a given society, social and cultural attitudes and values which are quite often embodied in domestic legislation and, in their turn and based on the financial and economic dominance of men within the family and society.The situation reflected, for example, is common in many African countries,the perception of a man as the main breadwinner for his family.

The idea of men's dominance in the society and, as a consequence, within the family(or vice versa) is reflected in the attitudes towards African traditional practices such as polygamy, bride-price, family planning, and motherhood. The existing attitudes towards these phenomena are not cases of violence as such but very often they are the causes of many conflicts including those which involve violence. This interrelationship is underlined in a number of studies.

For example, according to the Cameroonian study on family planning, which is accepted in that country with many difficulties, a source of many marital conflicts in homes is when women are accused of having foreign ideas which are inimical to the African culture.A Woman's insistence on family planning is often used as an excuse by a man to marry another wife. Doctors would never prescribe birth control methods to a wife without here husband's consent.

Polygamy, which is another African tradition has become a synonym of wealth and prestige. In Cameroon and Ghana women who oppose polygamy might be automatically divorced. The official

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[9]see bibliography No.1, 2, 3, 7, 10, 11, 12, 13, 15, 17 in Annex 1

acceptance of polygamy is often used as an argument in defence of the husband's right to have a free sexual life and to commit adultery. This practice is reinforced by certain sexual taboos regarding menstruating, pregnant and lactating women. However, the wives in polygamous marriage have to compete among themselves and this leads to jealousy, frustration and hatred. It creates a feeling of insecurity for them and their children and there are even cases when wives try to poison their co-wives or to cause other harm to them and their children.

Bride-price, which is often considered as a means to strengthen the family, turns out to be a cause of sufferings for many women in the case of unhappy or broken-down marriages when it comes to the necessity to return the paid lobolo. Quite often, it is not possible, simply because of financial reasons and women have to stay in such marriages. There is a clear tendency nowadays to use the bride-price for gaining maximum profit. It has become very operational and much more commercialised.

Traditional attitudes towards motherhood in African countries are also considered by some researchers as possible causes of sufferings for women. In many African ethnic groups a sterile woman is treated as a useless wife and this leads to the necessity to return the bride-price and to divorce. The position of an unmarried woman is even worse than that of a married one. A fear of getting into such a category and the desire to avoid the consequences of being childless send many women in search of someone to blame and accordingly these women spread untrue stories. Their hatred and jealousy usually turns to their girl-friends or to somebody's pregnancy with a first baby.

Consequences of violence

Unfortunately, this aspect of the problem is seldom addressed to in the available studies, especially case studies.[10] To some extent, authors only mention the sufferings of the women themselves, moral as well as physical, or the sufferings of the family children who are very often the witnesses of the battering of their mothers or the victims of violence themselves.

However, some of the papers put forward interesting questions regarding the consequences of violence against women in the society. For example, the relationship of child mortality with the traditional practice of child betrothals and marriages when girls who have reached puberty are forced into a regular sexual life with much older husbands.[11]

So far as violence affects the moral and physical health of women who, in Africa constitute more than a half of the labour force especially in agriculture, it has a direct impact on the condition and development of national economies. Unfortunately, so far no one has ever tried to calculate this type of loss which occurs due to the temporary or permanent exclusion of women-victims of violence from the production process or which is due to the reduction of women's creative abilities and the productivity of their labour as the result of violent acts against them. All such damage could be estimated and would prove to account for a large loss in national GDPS.

It is a well-known fact that violence often provokes violence. In this sense, women, who are driven crazy with violence from men

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[10]see bibliography No.1, 2, 3, 4, 5, 6 in Annex 1

[11]see The Incidence of Sexual Slavery in Africa: Sexual Abuse of Women in Cameroon. - ECA/ATRCW/3.5 ii (a)/88/1

against them and their children and in order to protect themselves, are goaded to murder their offenders. In such cases society suffers a double loss.

Violence in general and against women in particular has also a long-term effect which might reveal itself when a younger generation grows up. In order to coerce or humiliate a woman, the offender directs violence against her children inflicting on them serious moral and sometimes physical damage. It is then that such children suffer various physical, psychological and mental traumas which might lead to their total disability in future or which might severely handicap their productive and creative abilities. But, again, this damage is under-researched and under-documented to say nothing about the damage which is inflicted on children who are simply witnesses of violence between the parents, or in the streets between people, or from the pages of newspapers, journals, books, or from the screens of their TV sets and videomonitors, or in the cinema. Such children suffer terrible damage to their moral values. By such examples they are forced to accept violence as a normal type of social relations and then the very existence of the human being in society might be put in question.

Violence may also destroy the property which belongs to the victim or may even affect animals which are the victim's pets. And this must be also identified as a possible consequence of violence so far as it affects the results of human labour or the environment.

Attitudes towards and treatment of violence and its victims

This is yet another acute sphere which still waits to be properly researched, especially the problem of treatment of victims of violence.

The available research shows a variety of attitudes, approaches and methods. It shows, as well, that very often the actual practice is far from that proclaimed and embodied in the constitutions and the general law of African countries. The situation is even more accentuated when relations between people are governed by customary law and, particularly in those communities where there are such specific institutions as the Queen mother known as *ohemaa* among the *Ashanti in Ghana* who is said to have supreme power in all women's affairs.

Many authors[12] point out the laxity of the police to deal with sexual and other violent offences against women as well as the laxity of the courts in convicting the offenders of such crimes. Sometimes this environment causes sometimes the incidence of wife beating by an angry husband in the court itself as was the case in Egypt [13] reported by the social worker during a visit to the police station and mentioned in the Egyptian report to the Expert Group Meeting on Violence in the Family with Special Emphasis on its Effects on Women in 1986.

Mostly official attitudes do not reveal themselves so openly but merely neglect the complaints of women on various pretexes or by choosing a less punishable offence for conviction of the offender. (This is possible, due to the existing confusion in the definition of various sexual offences against women and their *corpus delicti,* as well as the specific nature and the requirements the evidence which is necessary to prove these types of crime) alternatives the applied sentence is simply reduced on the grounds that the victim was a married woman or that the offender was a

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[12] See bibliography No. 1, 2, 3, 4, 10, 15, 17 in Annex 1. Slso: Kahiko, Kathryn. A Lifeline for Rape Victimes: Kenya Times, 24 October 1991; Garande Tinaye. Cases of wife-beating, a cause for concern. The Herald, Harare, 30 October, 1991.

[13] see bibliography No.13 in Annex 1

young man of previously unblemished character or that the attempted rape was aggravated[14], these cases are mentioned in the Zimbabwe study.

There is an opinion that the standard of evidence in sexual offence cases is very high and does not correspond to the nature of the crime which allows many offenders to avoid a just punishment.

Many authors provide examples of general attitudes towards violence against women within the society and family. It may be considered to be a psychological paradox but people, including the victims themselves and even the parents of young girls, prefer not to speak about it and not to report such cases when they occur. In African communities, such practice is very common because the victims of violence are quite often degraded by society in general. In the case of young African girls, the fact that they have been sexually assaulted may cause even the reduction of the bride-price to say nothing about moral sufferings, shame and a serious psychological trauma which may cause abnormal sexual behaviour in the future.

The majority of studies stress the idea that the law itself can not be successful in combatting violence against women. It must be supported by the mobilisation actions in other spheres of social and economic life.

The action which is the most urgent is the establishment of official and non-official counselling and legal aid centres where women would be able to find sympathy and qualified advice on how and what to do in case they subjected to violence. Such institutions already exist in Africa like, for example, an anti-rape organisation which was launched recently in Kenya by Ms.Fatma

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[14]see bibliography No.10, 11 in Annex 1

Abeyd or Musasa Project in Zimbabwe or the legal clinic of Professor J.O.Akande in Nigeria and others. The Legal Counselling, Aid and Public Enlightenment Centre of Professor J.O.Akande was established in Lagos in April 1984 under the auspices of the Nigerian Institute of Advanced Legal Studies and with the financial assistance of the Ford Foundation. Its emphasis is on assisting women on all types of problems. Within a couple of years the Centre expanded its services to two other Nigerian States and received requests for initiating such activities in others.

The experience of such institutions must be properly studied and promoted.

Another measure is the creation of shelter or refuge centres for women-victims of violence. There is an idea that such institutions might exist on the proceeds of financial penalties applied to the offenders by the courts. However, in Africa there are almost no examples of such activities which it would be possible to study and analyse.

Expert Group Meeting on Violence Against Women

Following resolution 1991/18 of the Economic and Social Council, the Division for the Advancement of Women, Centre for Social Development and Humanitarian Affairs, United Nations Office in Vienna, organised a meeting of experts who discussed the extent to which the issue of violence against women was covered by existing international instruments including the Convention on the Elimination of All Forms of Discrimination Against Women.

The meeting came to conclusion that none of them explicitly addressed the problem and therefore it was necessary to develop a special instrument or mechanism. The experts discussed several possible alternatives, as well as major components of such an

instrument or mechanism. They have developed a draft of a Declaration on Violence Against Women which will be submitted to the General Assembly for adoption and which might serve as a basis for future Optional Protocol to the Women's Convention or even a separate Convention on the subject. The text of the Declaration is attached to this report. Among it contains other things a definition of violence against women and the scope of States' responsibilities with regard to the eradication of violence against women and the treatment of its victims. It is worth mentioning that the Declaration has incorporated many ideas expressed by the experts themselves, as well as by other participants of the meeting, including the representative of the ECA.

Tentative recommendations

Taking into account all the above-mentioned, it seems possible to recommend the following measures as priority action to be taken in African countries:

- to review current domestic legislation in order to:

(a) introduce a clear definition of violence, especially into the general part of national penal Codes;

(b) recognise violence as an aggravating factor leading to more severe punishment when found in the corpus delicti of an offence;

(c) provide more severe punishment when and if violence is directed against women, especially young girls, pregnant women, imbecile women, elderly women, and mothers;

(d) provide penalties for non-reporting on cases of violence, thus recognising violence as extremely dangerous for the

well-being of the existing social order; or provide premiums for those who report on such cases (out of the funds formed from the financial penalties against the offenders) - which is more appropriate or both;

(e) eradicate the parallelism of the two or three legal systems within African countries which are symbol of their colonial past when the existence of these systems was justified by the interests of the metropolitannation;

(f) make financial penalties an obligatory complement to the sanctions for violent offences; this money should be directed towards social support to the victims of violence and their children;

(g) eradicate the confusion in the definition of various forms of offences against the life, health, security and dignity of the person by :

- reducing the number of sexual offences to three main forms i.e. sexual violence, indecent assault and sexual harassment;[15]

- differentiating between the punishment for crimes against the life, health, security and dignity of the person by the presence of violence, the sex of the victim (men or women), the age of the victim (child, teenager, adult, elderly), the mental

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[15] Here, "sexual offence" means any offence committed against the person as a representative of his or her sex and for a sex related purpose; "sexual violence" means a violent sexual offence (i.e. sexual offence which involves violence on behalf of the offender); "indecent assult" means sexual violence which has not been completed due to any reason; "sexual harassment" means non-violent sexual offence (i.e. sexual offence which does not involve violence on behalf of the offender but which humiliates and degrades the victim as a representative of his or her sex).

condition of the victim (normal, imbecile), the physical condition of the victim (normal, handicapped), the condition of the victim with regard to motherhood (pregnant, mother);

(h) make it a rule of court procedure to conduct trials on sexual offences in camera, excluding even the possibility for the offender to see his victim during the court hearings;

(i) make it a rule of law to conduct any police investigation and court hearing of cases on sexual offences in complete anonymity with regard to the identity of the victim;

(j) make it a rule of law to treat cases of domestic violence against women as criminal offences;

(k) make it a rule of law to impose sanctions as an injunction on the offender, in all cases of sexual and other violent offences;

(l) make it a rule of law to forbid withdrawal and closure of cases on violence even at the request of the complainant.

- to urge governments to find ways for eradicating violence from the pages of newspapers, journals, books, on TV and video programmes, and at the cinema when it looks all too natural and detailed especially when it remains unpunished; to propagate in the mass media the high penalties received by offenders for their violent crimes and to sensitize society on the economic, social and moral consequences of violence against people and our environment.

- to urge governments to assist in the establishment of official and non-official counselling for the victims of violence, including the organisation of legal aid centres and agencies; to

create favourable working conditions for such institutions and their staff, including financial and administrative support.

- to urge governments to establish shelter and refuge centres for victims of violence; to create favourable working conditions for them and their staff including financial and administrative support; to direct part of the money from financial penalties against offenders in violent crimes towards such institutions.

- to urge governments to provide legal aid centres and shelter centres with qualified and sensitized staff in order to impart confidence into the victims of violence against women.

- to recommend the Economic Commission for Africa to assist governments in developing and implementing comprehensive studies of the problem of violence against women in various countries, in order to find the most effective and appropriate methods of combatting the problem, including the best available world wide experience.

ANNEX1

Bibliography

1. The Incidence of Sexual Slavery in Africa: Sexual Abuse of Women in Cameroon.
- ECA/ATRCW/3.5 ii (a)/88/1

2. Law and the Status of Women in Tanzania.
- E/CN.14/ATRCW/Res/81/04

3. Law and the Status of Women in Ghana.
- E/ECA/ATRCW/84/26

4. Le Droit et la Condition de la Femme au Maroc.
- ST/ECA/ATRCW/81/29

5. Le Droit et la Condition de la Femme en Republique Centrafricaine.
- E/ECA/ATRCW/85/09

6. Le Droit et la Condition de la Femme au Zaire.
- E/ECA/ATRCW/85/02

7. Comparative Study of National Laws on the Rights and Status of Women in Africa.
- ECA/ATRCW/3.5 ii (b)/89/3

8. Confronting Violence: A Manual for Commonwealth Action.
- Commonwealth Secretariat, 1987

9. Violence Against Women: Curriculum Materials for Legal Studies.
- Commonwealth Secretariat, 1988

10. Armstrong, Alice(Ed.). Women and Law in Southern Africa.
- Zimbabwe

Publishing House, 1987

11. Stewart, Julie & Armstrong, Alice(Ed.). The Legal Situation of Women in Southern Africa.
- University of Zimbabwe Publications, 1990

12. Forms of Crisis Intervention and Types of Immediate and Structural Measures to Render Assistance to Women Assaulted in the Family: The Case of Nigeria.
- BAW/EGM/86/CS.3

13. Forms of Crisis Intervention and Types of Immediate and Structural Measures to Render Assistance to Women Assaulted in the Family: The Case of Egypt.
- BAW/EGM/86/CS.5

14. Report of the Expert Group Meeting on Violence in the Family with Special Emphasis on Its Effects on Women.
- Vienna, 8 - 12 December, 1986

15. Efforts to Eradicate Violence Against Women Within the Family and Society: Report of the Secretary-General to the Commission on the Status of Women.
- E/CN.6/1988/6

16. Domestic Violence: Report of the Secretary-General to the Eighth United Nations Congress on the Prevention of Crime and the treatment of Offenders.
- A/CONF.144/17, 1990

17. Violence Against Women in the Family.
- ST/CSDHA/2, UNOV

18. Abrahams, Otillie. Missing link of a free society.
- Windhoek Observer, March 9, 1991

19. Garande, Tinaye. Cases of Wife-beating - a Cause for Concern.

- The Herald,
Harare, October 30, 1991

20. Kahiko, Kathryn. A Lifeline for Rape Victims.
- Kenya Times,
October 24, 1991